

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6129 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri Shantilal Chhotalal Chauhan

Versus

Indian Institute of Management, Ahmedabad

Appearance:

MR MC BHATT for Petitioners
MR KS NANAVATI for Respondent No. 1
SERVED for Respondent No. 2
PARTY-IN-PERSON for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/08/96

ORAL JUDGEMENT

1. Petitioner was appointed as Lower Division Clerk

in respondent No.1 Institute (hereinafter for the sake of brevity referred to as "IIMA") in the year 1967. Petitioner earned has got the first promotion as Upper Division Clerk on 1st July, 1973. On completing eight years continuous service as Upper Division Clerk, petitioner was granted personal promotion on 15th March, 1981. Petitioner has since then working as Upper Division Clerk and has not got further promotion in IIMA.

2. By filing this petition petitioner prays that he had only been wrongly superseded in the matter of promotion as Upper Division Clerk in the year 1972. Respondents No. 4 to 7 who were junior to petitioner, considering their respective appointments as Lower Division Clerk were promoted to the higher post as Office Assistant between the years 1978 and 1983. However, at one of these occasions, petitioner's case was considered and petitioner was not given promotion of Office Assistant. It is further claimed that respondents No. 4 and 5 were given further promotion as Executive Assistant in the year 1984 in utter disregard of the petitioner's prior claim for such promotion. Petitioner has also claimed that petitioner belongs to Scheduled Caste and in view of Reservation Policy applicable to the State Government and Institutions which are "State" within the meaning of Article 12 of the Constitution. The petitioner's case for promotion is required to be considered on the reserved quota of promotional post. Petitioner has stated that petitioner has wrongly been deprived of his legitimate right to promotion as aforesaid. In respect of his contention, he relied upon the settlement arrived at by IIMA and its employees which has been recorded by this Court in its Order dated August 8, 1990 made on Spl. C.A. No. 2127 of 1988. The petitioner claims that in view of the said settlement, there being consistently shortfall in the reserved quota for promotional post. Petitioner ought to have been given promotion to the post of Office Assistant and Executive Assistant w.e.f. 1st May, 1988.

3. The petitioner has reproduced the details of promotion granted to him and other Lower Division Clerks junior to him at page 4 of the petition. Amongst five persons listed in the table at page 4, the petitioner is the seniormost as Lower Division Clerk. Respondents No. 2 and 3 who were immediately junior to the petitioner as Lower Division Clerk were promoted as Upper Division Clerk in the year 1972 and 73 while the petitioner was promoted as such on 1st July, 1973. In the affidavit filed on behalf of IIMA in paragraph 6.1 it has been stated that both respondents No. 3 and 4 were promoted

as Upper Division Clerk in supersession of the petitioner in the year 1972 and 1973. It may be noted that petitioner has never questioned his supersession by respondents No. 4 and 5 in the year 1972 and 1973 respectively. In my view, the petitioner cannot be permitted to challenge his supersession by promotion of respondents No. 4 and 5 in the years 1972 and 1973 respectively. Petitioner claimed for deemed promotion w.e.f. 1972 therefore cannot be granted. It may be further noted that on account of his supersession by respondents No. 4 and 5, petitioner lost his seniority in the cadre of Upper Division Clerk to the said two respondents. I am therefore of the view that the petitioner's claim for deemed date of promotion as Office Assistant w.e.f. the year 1975 the dates on which the said respondents No. 4 and 5 were promoted as Office Assistant also cannot be granted.

4. The respondents No. 6 and 7 according to the petitioner were junior to the petitioner as Lower Division Clerk who were promoted as Upper Division Clerk on 15th July, 1974 and in the year 1976 respectively. Thus, the said two respondents though were junior to the petitioner as Upper Division Clerk they were promoted as Office Assistant on 23rd August, 1983 and 18th October, 1982 respectively in supersession of the petitioner. Thus, relying on the said facts, the petitioner claims that the petitioner was wrongly superseded in the year 1982 when respondent No. 7 was promoted as Office Assistant and once again in the month of August, 1983, respondent No.6 so promoted. The contention of the petitioner has been dealt with by IIMA in its affidavit at paragraphs 6.2 and 7. It has been stated that the post of Transport Assistant was filled in by direct section by inviting applications from the employees of the Institute as well as by public advertisement. In response to the said invitation, respondent No.5 had applied for the post of Transport Assistant and after going through the selection procedure he was selected for the post of Transport Assistant as direct recruit. It is further stated that petitioner did not apply for appointment to the post of Transport Assistant in response to the application invited from amongst the employees of the Institute. Learned Advocate Mr. Bhatt appearing for the petitioner has relied upon paragraph 10 of the affidavit made by the petitioner in rejoinder. He emphasised that no advertisement was issued for appointment to the post of Transport Assistant and it is not true that respondent No. 6 was appointed as Transport Assistant by direct recruitment. On perusal of the said paragraph 10, I find that there is specific

denial that public advertisement was issued inviting applications for appointment to the post of Transport Assistant. There is further denial that there were no applications by persons who were not employees of the Institute for appointment as Transport Assistant. However, the petitioner has not denied that applications were invited from the employees of the Institute. He has not denied that respondent No. 6 was appointed as Transport Assistant pursuant to the said application made by him and by direct selection. Thus, in absence of a specific denial, the contention of the IIMA that respondent No.6 was appointed by direct selection as Transport Assistant is got to be believed. The petitioner having not applied for direct selection, the challenge to the appointment of respondent no.6 as Transport Assistant requires to be rejected. Besides the representation made by the petitioner at Annexure 'F' to the petition belies the above contention.

5. Promotion of respondent No.7 as Office Assistant on 18th October, 1982 in supersession of the petitioner has been explained by the Institute in Paragraph - 7 of its affidavit. It has been stated that in the year 1982, IIMA took up the issue of grant of promotion to the persons belonging to the scheduled castes and scheduled tribes alone. The case of all the employees of IIMA belonging to Scheduled Caste and Scheduled Tribe who were otherwise eligible for further promotion were taken up for consideration. Said consideration was made on the basis of seniority-cum-merit-cum-background. It has been stated that the principle of seniority - cum - merit cum - background adopted by the IIMA is normal procedure for all promotion to be granted in IIMA. Along with others, petitioner and respondent No.7 being the employees belonging to Scheduled Caste and both being eligible for further promotion, their case for further promotion were considered. The Staff Committee constituting the relevant material found respondent No.7 fit for promotion and accordingly he was promoted on 18th October, 1982 as Office Assistant. However, the said Committee did not find petitioner fit for promotion and therefore he was not offered promotion at the relevant time. The aforesaid facts were denied by the petitioner in his affidavit-in-rejoinder. It may however be noted that petitioner has not challenged his supersession immediately or soon after respondent No.7 was promoted as Office Assistant. In view of the decision of the Hon'ble Supreme Court in the matter of P.S. SADASIVASWAMY v. STATE OF TAMIL NADU, reported in AIR 1974 SC 2271 this belated challenge to the promotion of respondent No.7 is not maintainable. The petitioner's claim for promotion

as Office Assistant w.e.f. 18th October, 1982 therefore required to be rejected.

6. Petitioner has also claimed that though the petitioner was granted personal promotion in the year 1981, petitioner has not been given regular promotion till date. He claims that even otherwise considering the reservation policy, petitioner ought to be granted promotion on reserved quota. In support of his contention, he has relied upon the Reservation Policy in the establishment of IIMA. The said settlement has been annexed at page 32 of the petition. The salient features of the said settlement relevant for the purpose of this petition are as under :

- (a) Roster System at IIMA would come into effect from 1.5.1988 (i.e. 15% for Scheduled Caste and 7.5% for Scheduled Tribe),
- (b) The shortfall would be worked out as on 1st May, 1988 for all the cadres/grades.
- (c) Number of shortfalls would be filled from amongst the Scheduled Castes/Scheduled Tribe employees as per the existing promotion or recruitment rules of the Institute.
- (d) All promotions covered by the Roster System which may be made in order to fill the shortfall would be deemed to be effective from 1st May, 1988.

7. Along with the settlement, the details of the shortfall has been appended in the tabular form. Mr. Bhatt appearing for the petitioner has stated that the petitioner would be covered by Group 'C' in the Pay Scale of Rs. 1400 - 2300. Against the said cadre, a shortfall of nine posts of scheduled castes has been noted.

8. In reply to the aforesaid contention raised by the petitioner, the respondents have not filed counter affidavit controverting the claim made by the petitioner. However, learned advocate Mr. Nanavati appearing for IIMA has relied upon the affidavit made on behalf of the Institute in Misc. civil Application No. 772 of 1994 filed by the petitioner herein. Relying on the said affidavit, Mr. Nanavati has submitted that the petitioner's case for promotion to the higher post as Scheduled Caste candidate has been considered in accordance with the relevant rules. However, considering his poor service record and

several punishments imposed upon the petitioner, he has not been found suitable for such promotion. It may be noted that said affidavit has been filed in reply to the Contempt Application taken out by the petitioner herein. The said affidavit does not specifically disclose the date on which such consideration took place. It would therefore, be in the interest of justice to direct the respondents to consider the case of the petitioner for grant of further promotion as on 1-5-1988 against the posts reserved for the Scheduled Caste candidates in accordance with the relevant rules governing such promotion. Therefore, the respondents No. 1 and 2 are directed to consider the case of the petitioner for promotion to the higher post as on 1-5-1988 in accordance with the relevant rules. If at all, the petitioner is not found suitable for promotion on 1-5-1988, his case for such promotion shall be considered from the date on which he is found suitable for such promotion. The petitioner shall be given deemed promotion with effect from the date on which he is found suitable for promotion. The petitioner shall be entitled to seniority from the date from which he is granted deemed promotion in accordance with the aforesaid directions. The petitioner shall also be entitled to the difference of salary from the date of such deemed promotion till the date of his actual promotion. The aforesaid exercise shall be done within a period of 8 weeks from today. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.
